

TOWN OF AMENIA
ZONING BOARD OF APPEALS
MARCH 8, 2006

PRESENT: Rudy Eschbach, Chairman
Norm Cayea
Katie Loughlin
Judy Velletri
David Rosenberg

The meeting was opened by Chairman Rudy Eschbach at 7:00 P.M. and Roll Call was taken.

The Public Hearing Notice was read. The purpose of this Public Hearing is that Mr. Loughlin is contesting a cease and desist order from the Zoning Administrator.

Bethany Ralph, Attorney represented Mr. Joseph Loughlin. Mr. Loughlin is not operating a commercial landscaping business from the property, but merely storing machinery and vehicles on the property of the type that is associated with farming activities. According to Schedule I of the Zoning Code of Amenia, this is a permitted accessory use in an RA zone. This machinery is not abandoned but used. The machinery is owned and operated by Frank Duncan. Mr. Duncan conducts his business from his office located in Millerton.

Frank Duncan was sworn in by Chairman Eschbach. He stated he lives at 100 Deer Run Road, Millerton and owns and operates a business named Northwest Lawn and Landscaping Maintenance located at 16 Century Boulevard, Millerton. At the office the employees do all types of billing, all paperwork is done there, as well as customer relations. The equipment is kept at the Loughlin farm in Wassaic. This equipment has been stored 4-5 years at that address. There are five trucks with snowplows, brush hog, york rake, posthole digger, lawnmowers, log splitter, tiller, and three utility trailers. The trucks are standard pick up trucks all registered in New York State. Mr. Duncan described what farming activities the different equipment could perform. Mr. Duncan stated that they had done different farm activities at that address for Mr. Loughlin.

Chairman Eschbach swore in Joseph Loughlin. Mr. Loughlin stated that he has been farming the property at 4 Loughlin Way for over 52 years. There are presently 23 acres left. Of those 23 acres 6-8 are used for hay, 3 acres for fruits and vegetables for their fruit and vegetable stand and the remainder is devoted to pasture. Ms. Ralph asked Mr. Loughlin if he performed farming activities on the farm today. Mr. Loughlin replied they cut hay, have a fruit and vegetable stand and pasture land. There is no operation of a commercial landscaping business on this property. There are pickups, dump truck, small tractor with equipment and small equipment (battery chargers, welders, compressors etc.) as well as equipment belonging to Mr. Duncan. The dump truck is stored outside. Stored outside for Mr. Duncan are five pick-ups, two dump trucks, and snow plows. Of those vehicles, all of them have been used for farming on the property. The posthole digger is used for putting up fence, the trucks are used to plow and sand the driveway; brush hogging, etc. are used for agricultural purposes.

Ms. Ralph wanted to note that under Schedule I of the Town of Amenia Zoning Code states permitted accessory uses in the RA zone include on a farm open storage of machinery or vehicles

customarily associated with farming operations. There is no requirement in Schedule I that the machinery or vehicles be owned by the landowner, actually used by the landowner, or be exclusively used by the landowner and no one else, or that the machinery or vehicles be used only on the land where they are located. They must be machinery or vehicles customarily used for farm activities.

Nancy Brusie, Zoning Administrator was sworn in. The complaint came to her office and was investigated. Ms. Brusie went to the definition for accessory use and home occupation. A home occupation must be conducted by the property owner as well as the accessory use. She contacted Michael Hayes the Town Attorney and he researched it as well. He looked not only at the local zoning ordinance but Section 305A of the Ag and Markets Law. In the Zoning Administrators understanding of the law, because the landowner receives a monetary value for the renting of the property that it was not considered a home occupation or accessory use. Ms. Brusie gave a copy of an email from the Town Attorney regarding the Ag and Markets Law to the Board. She also had a telephone conversation with Mr. Hayes regarding receiving money for the renting of the land and does the owner of the equipment live on the property. Yes, Mr. Loughlin receives money and no the owner does not live on the property.

Mark Reilly, Attorney representing Dan O'Brien who made the complaint, spoke to the Board. Mr. O'Brien feels that the storage of these vehicles on the Loughlin property has had a direct affect on his property values. We feel that the Zoning Administrator made the right decision. We also feel that the case regarding the apartments on the Loughlin property be looked at again. Mr. Reilly asked Mr. Clark, the former Chairperson, to reopen the case, however it was rejected. Mr. Reilly would ask that this case be revisited. Chairman Eschbach stated he would find out how to revisit this issue and be in touch with Mr. Reilly.

Ms. Ralph spoke to the Board stating she felt the request Mr. Reilly was asking was not in the scope of this meeting and therefore be ignored. With respect of the determination under Schedule I, home occupations are a separate category under permitted uses as well as other accessory uses. On a farm, open machinery or vehicles is a separate category. It is not under home occupation or accessory use.

Chairman Eschbach asked Mr. Duncan how much of the business is devoted to the farm. Mr. Duncan answered about 15-20%. The remainder is for landscaping operations not on the property. The vehicles stored on the property are just standard pickups. Chairman Eschbach asked Ms. Ralph regarding if Mr. Loughlin was aware anyone was operating a landscaping business on the property and he replied no. One would assume that a landscaping business is being operated from there if the trucks are parked there. Ms. Ralph stated that the business is being operated from an office in Millerton and they are just storing equipment on the property. Mr. Duncan stated that he uses his cell phone on the property to conduct business sometimes.

Board Member Rosenberg asked if on 23 acres would five or six pick up trucks and snowplows would be customary use. Mr. Loughlin answered no, not necessarily. Due to the fact he stores his trucks on the farm he may use one or two to plow and sand.

Mr. Duncan brought up a scenario regarding storage of hay for landscaping purposes. This is still rental space, is it for agriculture, storage, or commercial. Chairman Eschbach felt that since the Town Attorney could not be here tonight and he was not that familiar with the 509 Ag and Markets Law. He did not feel comfortable tonight without that legal advice to make a decision. He would rather see a continuance of the Public Hearing at next months meeting. The Board felt the same way, as well as Ms. Ralph.

MOTION TO CONTINUE THE OPEN PUBLIC HEARING FOR THE APRIL 19TH MEETING was made by Norm Cayea, seconded by Judy Velletri.

VOTE TAKEN – ALL IN FAVOR Katie Loughlin recused

REGULAR MEETING –

MOTION TO APPROVE THE FINDINGS OF FACT ON FEBRUARY 8, 2006 FOR THE NELLIGAN APPEAL was made by Katie Loughlin, seconded by David Rosenberg

VOTE TAKEN – ALL IN FAVOR

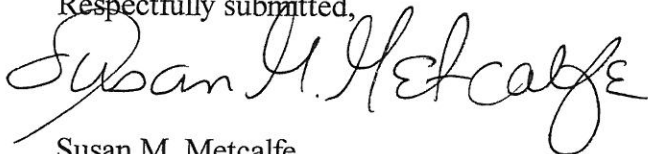
MOTION TO APPROVE THE MINUTES OF FEBRUARY 8, 2006 was made by David Rosenberg, seconded by Katie Loughlin

VOTE TAKEN – ALL IN FAVOR

MOTION TO ADJOURN THE MEETING AT 7:50 P.M. was made by Katie Loughlin, seconded by David Rosenberg

VOTE TAKEN – ALL IN FAVOR

Respectfully submitted,



Susan M. Metcalfe
Zoning Board of Appeals Secretary

The foregoing represents unapproved minutes of the Town of Amenia Zoning Board of Appeals from a meeting held on March 8, 2006 and are not to be construed as the final official minutes until so approved.

____ Approved as read
____ Approved with: deletions, corrections and additions